

## Message Text

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ACTION MMO-02

INFO OCT-01 ARA-06 ISO-00 L-03 CPR-01 AGRE-00 OES-06 EB-07  
OMB-01 CIAE-00 INR-07 NSAE-00 SS-15 NSC-05 SP-02  
ABF-01 SCA-01 PER-01 OPR-02 /061 W  
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R 172326Z DAC 76  
FM AMEMBASSY SAN SALVADOR  
LO RUEHC/SECSTATE WASHDC 2933  
INFO AMCONSUL MONTERREY

LIMITED OFFICIAL USE SECTION 1 OF 2 SAN SALVADOR 5736

MONTERREY FOR CAVIN, APHIS

E.O. 11652: N/A  
TAGS: AODE, EAGR, ES  
SUBJECT: APHIS MEDITERRANEAN FRUIT FLY PREVENTION PROGRAM:  
EL SALVADOR MOU

REF: SAN SALVADOR 5425 STATE 201161

1. WE DISCUSSED PROPOSEDIMOU BETWEEN GOES MINISTRY OF  
AGRICULTURE AND APHIS WITH APHIS REPS MUSSMAN AND CAVIN  
DEC 14. MUSSMAN AND CAVIN HAD HOPES OF OBTAINING SIGNATURE  
OF MINISTER OF AGRICULTURE ESCOBAR GARCIA TO SLIGHTLY REVISED  
ENGLISH VERSION OF AGREEMENT IN COURSE OF CURRENT MEETICG OF  
CA MINISTERS OF AGRICULTURE IN MANAGUA. HOWEVER, IN VIEW OF  
PROBLEMS DETECTED IN PROPOSED MOU, WE RECOMMENDED THEY NOT PRESS  
FOR SIGNATURE AT THIS TIME. WE PROMISED  
TO ASSIST IN EXPEDITIOUS CONCLUSION OF AGREEMENT THROUGH  
FGREIGN MINISTRY AND MINISTRY OF AGRICULTURE BUT DEPARTMENT  
ASSISTANCE AND ADVICE NEEDED ON SEVERAL POINTS. THE  
FOLLOWING PROBLEMS ARISE FROM CURRENT TEXT OF MOU:  
2. THERE ARE SUBSTANTIAL DISCREPANCIES BETWEEN SPANISH AND  
ENGLISH TEXTS OF PROPOSED MOU. PARAGRAPH 4 OF SECTION A OF  
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SPANISH TEXT IN TRANSLATION STATES  
THAT MINISTRY OF AGRICULTURE WILL "PROVIDE  
ALL ADMINISTRATIVE CONVENIENCES INCLUDING ALL CONSULAR  
PRIVILEGES WHICH MAY BE REQUIRED FOR THE TERMPORARY ASSIGN-  
MENT IN EL SALVADOR OF TECHNICAL PERSONNEL, EQUIPMENT, INSTRU-  
MENTS AND MATERIALS TO BE USED IN THE DEVELOPMENT OF THE

PROGRAMS AUTHORIZED". THE ENGLISH TEXT STATES, "THE UNITED STATES PERSONNEL AND THEIR FAMILIES FORMING THEIR RESPECTIVE HOUSEHOLD, ASSIGNED UNDER THIS AGREEMENT, WILL ENJOY ALL THE PRIVILEGES AND IMMUNITIES ACCORDED TO THE TECHNICAL STAFF OF THE MISSION AS PROVIDED FOR IN ARTICLE 37 AND OTHER APPLICABLE ARTICLES OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS". THE LAST SENTENCE OF PARAGRAPH 8(A) OF SECTION C STATES, IN SPANISH, "SAID EMPLOYEES SHALL BE SUBJECT TO THE RULES OF THE DEPARTMENT OF STATE APPLICABLE TO THE EMPLOYMENT OF SALVADORAN CITIZENS." THE ENGLISH VERSION STATES, "SAID EMPLOYEES ARE SUBJECT TO THE EL SALVADOR LABOR LAWS, IN ACCORD WITH THE UNITED STATES DEPARTMENT OF STATE REGULATIONS APPLICABLE TO THE EMPLOYMENT OF SALVADORAN NATIONALS."

3. IN ADDITION TO DISCREPANCIES IN TRANSLATION THE TWO ABOVE MENTIONED SECTIONS OF THE MOU, PARTICULARLY SECTION A PARAGRAPH 4, RAISE OTHER SUBSTANTIVE ISSUES. WITH REGARD TO PRIVILEGES AND IMMUNITIES, APPLICATION OF ARTICLE 37 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS WOULD PROVIDE APHIS PERSONNEL ASSIGNED TO EL SALVADOR UNDER PROPOSED AGREEMENT WITH ONLY THE LIMITED PRIVILEGES AND IMMUNITIES ACCORDED TO "TECHNICAL AND ADMINISTRATIVE PERSONNEL" UNDER THE CONVENTION. THUS THEY WOULD BE SUBJECT TO SALVADORAN ADMINISTRATIVE AND CIVIL JURISDICTION FOR ACTS COMMITTED OUTSIDE THE COURSE OF THEIR DUTIES AND CUSTOMS PRIVILEGES WOULD BE ACCORDED ONLY TO ARTICLES IMPORTED AT THE TIME OF FIRST INSTALLATION. THIS WOULD BE INCONSISTENT WITH THE TREATMENT ACCORDED BY THE GOES TO REPRESENTATIVES OF THE VETERINARY SERVICES DIVISION OF APHIS, WHO HAVE BEEN OPERATING A FOOT AND MOUTH DISEASE PREVENTION PROGRAM IN EL SALVADOR SINCE 1973. THE AGREEMENT UNDER WHICH THIS PRO-LIMITED OFFICIAL USE  
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GRAM OPERATOR (TIAS 7701) SPECIFIES IN PARAGRAPHS 8 AND 9, "8. OFFICIALS AND EMPLOYEES OF THE DEPARTMENT PARTICIPATING IN THE COOPERATIVE PROGRAM WILL ENJOY THE PRIVILEGES AND IMMUNITIES ACCORDED TO DIPLOMATIC PERSONNEL OF THE EMBASSY OF THE UNITED STATES OF AMERICA IN EL SALVADOR IN RESPECT TO IMMUNITY FROM THE CRIMINAL JURISDICTION OF THE REPUBLIC OF EL SALVADOR. SUCH OFFICIALS AND EMPLOYEES WILL ENJOY IMMUNITY FROM CIVIL AND ADMINISTRATIVE JURISDICTION OF THE REPUBLIC OF EL SALVADOR IN RESPECT TO ACTS PERFORMED IN THE EXERCISE OF THEIR FUNCTIONS UNDER THIS AGREEMENT.

"9. THE GOVERNMENT OF EL SALVADOR WILL PERMIT THE DUTY-FREE ENTRY AND DISPOSAL OF PERSONAL EFFECTS, HOUSEHOLD GOODS AND VEHICLES OF UNITED STATES PERSONNEL PARTICIPATING IN THE COOPERATIVE PROGRAM AND OF THEIR IMMEDIATE HOUSEHOLD IN ACCORDANCE WITH THE SAME PRACTICES AND REGULATIONS AS ARE APPLIED BY THE GOVERNMENT OF EL SALVADOR TO DIPLOMATIC PERSONNEL OF THE UNITED STATES EMBASSY IN EL SALVADOR."

AID PERSONNEL, UNDER THE GENERAL AGREEMENT FOR ECONOMIC, TECHNICAL AND RELATED ASSISTANCE (13 UST 266) ARE PROVIDED

THE COMPLETE RANGE OF PRIVILEGES AND IMMUNITIES GRANTED TO  
EMBASSY PERSONNEL OF COMPARABLE RANK. ARTICLE III OF THE  
AID BILATERAL STATES, "THE GOVERNMENT OF EL SALVADOR...  
WILL CONSIDER THIS SPECIAL MISSION AND ITS PERSONNEL AS  
A PART OF THE DIPLOMATIC MISSION OF THE GOVERNMENT OF THE  
UNITED STATES OF AMERICA IN EL SALVADOR THE PURPOSE OF  
RECEIVING THE PRIVILEGES AND IMMUNITIES ACCORDED  
TO THAT MISSION AND ITS PERSONNEL OF COMPARABLE RANK."  
4. IN EMBASSY VIEW, LANGUAGE OF AID BILATERAL IS SUPERIOR  
TO THAT OF PROPOSED MOU. AS FALLBACK POSITION, WE WOULD  
URGE, AS MINIMUM, USE OF LANGUAGE IN VETERINARY SERVICES  
AGREEMENT (TIAS 7701). FIRST, IT WOULD PROVIDE MORE AMPLE  
DUTY FREE ENTRY OF PERSONAL EFFECTS. SECONDLY, CONCLUSION  
OF AGREEMENT ACCEPTING LESS IN TERMS OF PRIVILEGES AND  
IMMUNITIES FOR PARTICULAR CLASS OF U.S. PERSONNEL STATIONED  
IN EL SALVADOR COULD SET PRECEDENT FOR SUBSEQUENT AGREEMENTS  
USG MAY WISH TO NEGOTIATE HERE. WE BELIEVE GOES AT PRESENT  
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TIME WOULD BE INCLINED TO ACCEPT AID BILATERAL OR EARLIER APHIS  
AGREEMENT AS PRECEDENT FOR PROVISIONS OF MOU.

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ACTION MMO-02

INFO OCT-01 ARA-06 ISO-00 L-03 CPR-01 AGRE-00 OES-06 EB-07

OMB-01 CIAE-00 INR-07 NSAE-00 SS-15 NSC-05 SP-02

ABF-01 SCA-01 PER-01 OPR-02 /061 W

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R 172326Z DE C76

FM AMEMBASSY SAN SALVADOR

TO SECSTATE WASHDC 2934

INFO AMCONSUL MONTERREY

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5. FURTHER POSSIBLE PROBLEM ON IMMUNITIES AND PRIVILEGES  
SIDE IS RAISED BY FACT THAT MOU IS APPARENTLY TO BE SIGNED  
ONLY BY MINISTER OF AGRICULTURE FOR GOES SIDE. OUR INFORMAL  
DISCUSSIONS WITH FOREIGN MINISTRY, WHICH WAS UNAWARE OF

PROPOSED MOU, SUGGEST THAT MINISTER OF AGRICULTURE IS NOT NOW AUTHORIZED TO EXTEND DIPLOMATIC PRIVILEGES AND IMMUNITIES, WHICH ARE PROVINCE OF FOREIGN MINISTRY. IMPLEMENTATION OF DUTY-FREE ENTRY PRIVILEGES WOULD DEPEND UPON CUSTOMS SERVICE, UNDER MINISTRY OF FINANCE. MINISTER AGRICULTURE TOLD FONOFF PROTOCOL CHIEF HE UNDERSTOOD AMERICAN PERSONNEL COMING IN ONLY FOR SHORT PERIODS OF TDY, WHEREAS APHIS IN FACT PLANS TWO-YEAR PCS. FOREIGN MINISTRY SENDING NOTE TO MINISTER OF AGRICULTURE ASKING HIM TO INSURE FULLEST DEGREE OF IMMUNITIES AND PRIVILEGES IN ANY NEGOTIATION AND DRAFT TALKS. THESE POTENTIAL PROBLEMS OF INTRA-GOES CLEARANCE SUGGEST TO US THAT IT WOULD BE ADVISABLE TO CONCLUDE THIS AGREEMENT IN MANNER OF VETERINARY SERVICES DIVISION AGREEMENT, THAT IS, BY EXCHANGE OF DIPLOMATIC NOTES BETWEEN EMBASSY AND FOREIGN MINISTRY, INCLUDING TEXT OF MOU SIGNED BY APHIS ADMINISTRATOR OR AMBASSADOR AND MINISTER OF AGRICULTURE. THIS WOULD ASSURE FULL COMMITMENT BY GOES TO TERMS OF MOU.

6. ENGLISH TEXT OF SECTION C, PARAGRAH 8(A) OF PROPOSED MOU CONTAINS INTERNAL CONTRADICTION. SALVADORAN EMPLOYEES LIMITED OFFICIAL USE

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OF USG ARE NOT REPEAT NOT SUBJECT TO SALVADORAN LABOR CODE, EVEN THOUGH EMBASSY IN PRACTICE CONFORMS TO SPIRIT OF THAT CODE AND IS MOVING TOWARD FURTHER CONFORMITY WITH IT. SALVADORAN LABOR CODE IS FERTILE SOURCE OF LITIGATION AND, IN EMBASSY VIEW, IT WOULD BE UNWISE CONCLUDE AGREEMENT MAKING OBLIGATORY ITS APPLICATION TO ANY CLASS OF SALVADORAN EMPLOYEES OF USG.

7. IN SUM, EMBASSY RECOMMENDS: (A) THAT ENGLISH AND SPANISH TEXTS OF PROPOSED MOU BE REVIEWED AT WASHINGTON LEVEL AND INCONSISTENCIES REMOVED; (B) THAT REFERENCE TO SALVADORAN LABOR CODE BE REMOVED FROM PARAGRAPH 8(A) OF SECTION C OF PROPOSED MOU; (C) THAT LANGUAGE ALONG THE FOLLOWING LINES TO PROVIDE

PRIVILEGES AND IMMUNITIES WE STRONGLY BELIEVE WE SHOULD SEEK BE SUBSTITUTED FOR PARAGRAPH 4, SECTION A OF MOU: "THE GOVERNMENT OF EL SALVADOR WILL CONSIDER AMERICAN PERSONNEL ASSIGNED TO EL SALVADOR TO CARRY OUT THE RESPONSIBILITIES OF THE DEPARTMENT UNDER THIS MEMORANDUM OF UNDERSTANDING AS PART OF THE DIPLOMATIC MISSION OF THE UNITED STATES OF AMERICA IN EL SALVADOR FOR THE PURPOSE OF RECEIVING THE PRIVILEGES AND IMMUNITIES ACCORDED TO SUCH PERSONNEL OF COMPARABLE RANK."; AND THAT, ONLY AT A MINIMUM, THE LANGUAGE OF PARAGRAPHS 8 AND 9 OF THE AGREEMENT ON THE PREVENTION OF FOOT AND MOUTH DISEASE AND RINDERPEST (TIAS 7701) BE SUBSTITUTED FOR PARAGRAPH 4, SECTION A OF MOU; AND (D) THAT AGREEMENT BE CONCLUDED BY EXCHANGE OF TRANSMITTAL NOTES BETWEEN EMBASSY AND FOREIGN MINISTRY IN MANNER PREVIOUS APHIS AGREEMENT.

8. WE SEE NO PROBLEM UNDER MODE FOR TWO ADDITIONAL AMERICAN STAFF AND THE REQUIRED LOCAL COMPLEMENT. HOWEVER, EMBASSY

WILL NEED EARLY PRECISE INDICATION OF NATURE AND EXTENT OF  
ADMINISTRATIVE SUPPORT REQUIREMENTS IN ORDER TO PROGRAM  
UNDER FOREIGN AFFAIRS ADMINISTRATIVE SUPPORT SYSTEM. SUCH  
REQUIREMENTS, PARTICULARLY IN THE AREA OF FINANCIAL SERVICES,  
MAY NECESSITATE AUGMENTATION OF EMBASSY LOCAL STAFF.  
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\*\*\* Current Classification \*\*\* LIMITED OFFICIAL USE

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